

GUIDELINES ON THE DISCLOSURE OF INFORMATION (Privileged & Confidential)

I. AVOIDING UNLAWFUL COMMAND INFLUENCE/UCMJ ISSUES

Unlawful command influence can be any statement or act that influences, or appears to influence, the UCMJ process, outside proper military justice procedure. In instances where courts have found unlawful command influence, cases have been remanded for retrial, dismissed, or the conviction set aside.

Do's:

- It is permissible to state the need for good order and discipline, that certain standards are established and can be expected to be enforced, and that Soldiers can expect to be held accountable for their actions.
- If you must comment on Major Hasan's case, focus on the actual status of the process to date, or how a UCMJ case proceeds generally.
- If forced to comment on Major Hasan's case, convey an open mind as to proper disposition of the case; avoid giving the impression that you have a view about what should happen to Major Hasan; and preserve the discretion that subordinates (investigators, reviewing officials, commanders, military judges, court members (jurors) must exercise.
- The best overall posture is to "state less and, if ever, state it later."

Don'ts:

- In general, unless authorized in proper channels, avoid all commentary about Major Hasan personally, his background, activities and reported statements; refer such inquiries to Major Hasan's lawyer, J.P. Galligan of Killeen, TX.
- Do not disseminate information about Major Hasan to the media, unless specifically authorized to do so, as it may create prejudicial pre-trial publicity that will be the subject of a defense motion.
- Do not comment on the specifics of the case, the individual accused, the appropriate outcome of the case, or even, in general, that people who commit a certain type of offense should receive a certain type of punishment.
- Do not comment upon the command action contemplated or likely to occur, or what you "expect." Avoid messages which appear to send signals "down the chain" about desired or expected results.
- Do not make remarks about potential witnesses or their testimony or the performance of investigators, counsel, or judges.
- We can't avoid all comment about Fort Hood, but you should assume that anything you say will be considered by those involved with the case and may unnecessarily impede the proper process of the matter.

II. FISA-OBTAINED INFORMATION

- The Foreign Intelligence Surveillance Act (FISA) governs the collection of foreign intelligence through electronic surveillance and other means.
- The fact of a FISA-authorized collection against a particular target is generally classified information. The number of intercepted communications to or from a target, under a FISA authorized collection, is classified information. Documents containing FISA derived information (*e.g.*, the content of emails) is classified unless and until the original classification authority determines otherwise.
- Pursuant to FISA, there can be no use of FISA-derived information in a criminal proceeding without prior approval of the Attorney General.
- Leaks of the FISA-derived information do not relieve us of FISA's restrictions; the prosecution must still obtain the AG's permission to use the information. If it does not, dismissal of charges could be imposed as a sanction.
- Unauthorized disclosure of FISA-derived information to the press and public (through Members of Congress, for example), jeopardizes the criminal prosecution because the defense will argue that information used by the prosecution was obtained without the AG's approval, and also jeopardizes sources and methods.

III. PARALLEL INVESTIGATIONS

- Multiple investigations of the same subject will be a fact of life.
- Assume that information generated or produced in one investigation will be sought by the defense or prosecution in the criminal case.
- Testimony and statements provided by a witness in one investigation may be relevant to another investigation; fact witnesses will be in high demand; therefore, to reduce the imposition on potential witnesses for the criminal case and the demand for what would otherwise be unnecessary repetition of their testimony, avoid producing witnesses for congressional or other testimony who are needed for the criminal case when possible and properly permitted by law and circumstance.,